

*Sub \$3*

29. (new) The liquefied soluble acidity reducing formulation, according to claim 7, wherein the formulation includes from about 0.5 to about 1 part of propylene glycol.

#### REMARKS

Claims 1-21 are pending in United States Serial No. 09/674,369. Claims 5, 7, 14-19 and 21 have been amended by the present amendment. Claims 22-29 have been added by the present amendment. Claims 20 and 21 have been allowed by the Examiner. Applicant respectfully requests reconsideration of claims 1-19 and 22-29, based on the amendments and arguments set forth herein.

At the time of filing the present application, Applicant paid for a total of twenty-one (21) claims, including three (3) independent claims. The present amendment has resulted in the addition of eight (8) new claims to the application. In addition, claims 5, 7 and 17 have been amended from dependent to independent claims. As such, Applicant has enclosed a check in the amount of \$198.00 to cover the cost of three (3) additional independent claims and eight (8) additional dependent claims. A Patent Application Fee Determination Record form is also enclosed herewith.

#### 35 U.S.C. §103(a) Rejection

Claims 1-4, 6, 14 and 15 have been rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 5,350,591 to Canton. It is specifically alleged that preparing a liquid product containing a bicarbonate, binder and water would have been obvious in view of United States Patent No. 5,350,591. With respect to claims 4 and 6, it is alleged that it would have been obvious to use sodium benzoate and potassium sorbate as preservatives in the liquid product. With respect to claims 14 and 15, it is alleged that it would have been obvious to mix the liquid product with a beverage to raise the pH of the beverage.

Applicant respectfully disagrees with the rejection of claims 1-4, 6, 14 and 15 in view of United States Patent No. 5,350,591. In general, the '591 patent discloses a dry, powdered foaming additive for hot coffee beverages. See Abstract; column 1, lines 6-10; column 3, lines 30-34; column 3, lines 55-65; column 4, lines 39-45; Example Nos. 1-3; claims 1-20.

The dry, powdered *foaming additive* comprises a sugar, a starch, sodium bicarbonate, a two-component releasing agent and a hydrating agent. The '591 patent specifically teaches that the *foaming additive* "depends on sodium bicarbonate and releasing agents to release carbon dioxide gas into a sugar and starch combination under predetermined conditions." See column 4, lines 41-45. The sugar is selected from glucose, lactose, maltose, and sucrose. The two-component releasing agent contains monocalcium phosphate, fumaric acid or citric acid as the first component and sodium aluminum phosphate, sodium aluminum sulfate, and dicalcium phosphate dihydrate as the second component. The '591 patent specifically teaches that the two-component releasing agent is *critical* to the foaming additive composition. See column 5, lines 33-34.

In contrast to the teachings of the '591 patent, claims 1-4 and 6 of the present invention provide a liquefied soluble acidity-reducing formulation comprising an edible bicarbonate, a soluble binder, water, and optionally a preservative, wherein the formulation substantially excludes acidulant components.

The liquefied acidity reducing formulation of in claims 1-4 and 6 of the present invention does not contain a sugar component (ie-a monosaccharide or disaccharide), as expressly *required* by the '591 patent. Furthermore, the present invention does not include a two-component releasing agent, which is disclosed as being absolutely *critical* to the dry powder *foaming* additive of the '591 patent. To further distinguish claims 1-4 and 6 of the present invention, it should be specifically noted that Example Nos. 2 and 3 of the '591 patent include the *acidulant components*, fumaric acid and citric acids as part of the two-component releasing agent. The primary objective of the present invention is to provide an acidity-reducing formulation for food and beverages and, therefore, the formulation of the present invention substantially excludes acidulant components. The *foaming* additive composition of the '591 patent specifically contains acidulant

components and, therefore, unequivocally teaches away from a formulation that substantially excludes acidulant components.

The ‘591 patent does not disclose, teach or provide motivation for a liquefied acidity reducing formulation. To the contrary, the ‘591 patent discloses a dry, powdered *foaming additive* that is specifically limited to addition to hot coffee. The overall objective of the ‘591 patent is to provide a coffee product having a *foamed* head that closely resembles the color, taste, aroma and longevity of a steam generator prepared coffee. The ‘591 patent does not contemplate or address the addition of an acid-reducing additive to another food or beverage product for the purpose of raising the pH of the food or beverage product. For these reasons, Applicant respectfully submits that claims 1-4, 6, 14 and 15 are patentable over the ‘591 patent.

Applicant maintains that the liquefied soluble acidity reducing formulation of the present invention is clearly distinguishable from the foaming additive composition of the ‘591 patent, based on the differences in the components of the respective products. Applicant, however, in addition to the above arguments, hereby also traverses the rejection based on the case cited in the Office Action.

Eskimo Pie v. John Levous et al., 35 F.2d 120 (3<sup>rd</sup> Cir. 1929) is cited for the proposition that “[T]here is no invention in merely changing the shape or form of an article without changing its function except in a design patent.” The facts surrounding the prosecution of the present application are easily distinguishable from the facts of Eskimo Pie. The *foaming* additive composition of the ‘591 patent and the acidity reducing formulation of the present invention have entirely different functions. The *foaming* additive of the ‘591 patent, when added to hot coffee, produces a foaming head on the surface of the coffee to simulate the foam head produced on the surface of a steam generated coffee. The ‘591 patent does not disclose or suggest that its *foaming* additive reduces the acidity of the hot coffee beverage. In fact, the two-part releasing agent of the *foaming* additive includes acidulant components, such as fumaric acid and citric acid, which can only serve to *increase* the acidity of the hot coffee beverage. To the contrary, the acidity reducing formulation of the present invention reduces the acid content of a given food or beverage product to which it is added, and does not form a foaming head

on the surface of the food or beverage product. The functions of the composition of the '591 patent and the formulation of the present invention are different. As the functions of the compositions of the '591 patent and the present invention are clearly different, Eskimo Pie does not apply to the present situation.

The Examiner has objected to claims 5 and 7-19 as being based upon a rejected base claims, but has indicated that claims 5 and 7-19 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As suggested by the Examiner, Applicant has rewritten claim 5 in independent form and to include all of the limitations of claim 1. Claim 5 now reads: “[A] liquefied soluble acidity reducing formulation comprising from about 15% to about 20% by weight of an edible bicarbonate, a soluble binder, water, and optionally a preservative, wherein the weight of said edible bicarbonate is based on the total weight of the edible bicarbonate, soluble binder and water, and wherein the formulation substantially excludes acidulant components.” Applicant respectfully submits that claim 5 is now in condition for allowance. Applicant has also added new claims 22-28, which ultimately depend from amended claim 5. As claim 5 is in condition for allowance, Applicant respectfully submits that claims 22-28 are also in condition for allowance.

Applicant has rewritten claim 7 in independent form and to include the limitations of claim 1. Amended claim 7 now reads: “[A] liquefied soluble acidity reducing formulation consisting essentially of an edible bicarbonate, a soluble binder, water and optionally a preservative, wherein the formulation substantially excludes acidulant components.” Applicant respectfully submits that claim 7 is now in condition for allowance. Claims 8-12 depend from amended claim 7. Applicant has also added new claim 29, which depends from amended claim 7. Applicant, therefore, respectfully submits that claims 8-12 and 29 are also in condition for allowance.

Applicant has amended claim 14 to include the limitation of claim 5, relating to the amount of edible bicarbonate present in the formulation. Claim 14 now reads: “[A] method for raising the pH of a consumable food or beverage product before consumption of said food product comprising: mixing with said food or beverage product, an effective amount of a liquefied soluble acidity reducing formulation comprising: (i) from about 15% to about 20% by weight of an edible bicarbonate; (ii) a soluble binder; (iii) water and (iv) optionally, a preservative, wherein the weight of the edible bicarbonate is based on the total weight of the edible bicarbonate, soluble binder and water, and wherein the formulation substantially excludes acidulant components.” Applicant respectfully submits that claim 14 is now in condition for allowance. Applicant respectfully submits that claims 15 and 16, which depend from amended claim 14, are also in condition for allowance.

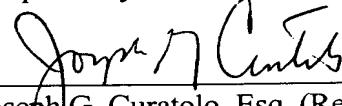
Applicant has rewritten claim 17 in independent form and to include the limitations of claim 1. Claim 17 now reads: “[A] method for raising the pH of a consumable food product before consumption of said food or beverage product comprising: mixing with said food or beverage product, an effective amount of a liquefied soluble acidity reducing formulation consisting essentially of: (i) an edible bicarbonate; (ii) a soluble binder; (iii) water; and (iv) optionally, a preservative, wherein the formulation substantially excludes acidulant components.” Applicant respectfully submits that claim 17 is now in condition for allowance. Applicant also submits that dependent claims 18 and 19 are also in condition for allowance.

Claims 15, 16, 18, 19 have been amended to be consistent with the amended claims 14 and 17. Applicant has also amended claim 21 to correct a minor typographical error.

In view of the amendments and remarks contained above, Applicant respectfully requests the withdrawal of the 35 U.S.C. §103(a) rejection and further request the issuance of a Formal Notice of Allowance directed to claims 1-29.

Should the Examiner have any questions, Applicant's undersigned attorney would welcome a telephone call.

Respectfully submitted,



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MARKED-UP VERSION SHOWING CLAIM AMENDMENTS

Claims 5, 7, 14-19 and 21 have been amended as follows:

5. (amended) [The] A liquefied soluble acidity reducing formulation[, according to claim 1, wherein said formulation includes] comprising from about 15% to about 20% by weight of [said] an edible bicarbonate, [based on the weight of the edible bicarbonate, soluble binder and water], a soluble binder, water, and optionally a preservative, wherein the weight of said edible bicarbonate is based on the total weight of the edible bicarbonate, soluble binder and water, and wherein the formulation substantially excludes acidulent components.

7. (amended) [The] A liquefied soluble acidity reducing formulation[, according to claim 1,] consisting essentially of an edible bicarbonate, a soluble binder, water and optionally a preservative, wherein the formulation substantially excludes acidulent components.

14. (amended) A method for raising the pH of a consumable food or beverage product before consumption of said food or beverage product comprising:

mixing with said food or beverage product, an effective amount of a liquefied soluble acidity reducing formulation comprising: (i) from about 15% to about 20% by weight of an edible bicarbonate; (ii) a soluble binder; (iii) water and (iv) optionally, a preservative, wherein the weight of the edible bicarbonate is based on the total weight of the edible bicarbonate, soluble binder and water, and wherein the formulation substantially excludes acidulent components.

15. (amended) The method for raising the pH of a consumable food or beverage product before consumption, according to claim 14, wherein said food product is a beverage.

16. (amended) The method for raising the pH of a consumable food or beverage product before consumption, according to claim 14, wherein an effective amount of said formulation is added to said food or beverage product to raise the pH of the food or beverage product from about 0.5 to about 2 pH units.

17. (amended) [The] A method for raising the pH of a consumable food or beverage product before consumption of said food or beverage product[, according to claim 14,] comprising: mixing with said food or beverage product, an effective amount of a liquefied soluble acidity reducing formulation consisting essentially of: (i) an edible bicarbonate; (ii) a soluble binder; (iii) water; and (iv) optionally, a preservative, wherein the formulation substantially excludes acidulant components.

18. (amended) The method for raising the pH of a consumable food or beverage product before consumption, according to claim 17, wherein said food or beverage product is a beverage.

19. (amended) The method for raising the pH of a consumable food or beverage product before consumption, according to claim 17, wherein an effective amount of said formulation is added to said food or beverage product to raise the pH of the food or beverage product from about 0.5 to about 2 pH units.

21. (amended) [A] The packaged acid-containing food product, according to claim [14] 20, wherein said formulation excludes acidulant components.

New claims 22-29 have been added:

22. (new) The liquefied soluble acidity reducing formulation, according to claim 5, wherein the edible bicarbonate is selected from the group consisting of sodium bicarbonate, calcium bicarbonate and potassium bicarbonate.

23. (new) The liquefied soluble acidity reducing formulation, according to claim 5, wherein the soluble binder is selected from the group consisting of cornstarch, wheat flower, arrowroot, xanthan gum, gum arabic, guar gum, agar agar, locust bean gum, gum tragacanth, cellulose gums and mixtures thereof.

24. (new) The liquefied soluble acidity reducing formulation, according to claim 23, wherein the soluble binder is cornstarch.
25. (new) The liquefied soluble acidity reducing formulation, according to claim 23, wherein the soluble binder is xanthan gum.
26. (new) The liquefied soluble acidity reducing formulation, according to claim 25, wherein the formulation includes from about 0.5 to about 1 part of propylene glycol.
27. (new) The liquefied soluble acidity reducing formulation, according to claim 5, wherein the preservative is present and is selected from the group consisting of sodium benzoate and potassium sorbate.
28. (new) The liquefied soluble acidity reducing formulation, according to claim 5, wherein said formulation includes less than about 1% by weight of said preservative, based on the weight of the bicarbonate and the soluble binder.
29. (new) The liquefied soluble acidity reducing formulation, according to claim 7, wherein the formulation includes from about 0.5 to about 1 part of propylene glycol.